

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA**

CIVIL ACTION NUMBER 1:17-CV-00184-CCE-LPA

BARRY HONIG, an individual,

Plaintiff,

v.

ROBERT LADD, an individual; **MGT CAPITAL INVESTMENTS, INC.**, a Delaware corporation; **TERI BUHL**, an individual; and **DOES 1-20**,

Defendants.

**NOTICE OF WITHDRAWAL OF
MOTION TO DISMISS FOR
IMPROPER VENUE PURSUANT TO
RULE 12(b)(3)**

Defendants Robert Ladd and MGT Capital Investments, Inc. (“MGT”), through counsel, hereby notify the Court that they withdraw their motion to dismiss for improper venue pursuant to Fed. R. Civ. P. 12(b)(3). (DE 19-21). Mr. Ladd and MGT continue to maintain their motion to dismiss for failure to state a claim pursuant to Fed. R. Civ. P. 12(b)(6).

Mr. Ladd and MGT respectfully show the following:

1. Plaintiff Barry Honig filed the Complaint in this action on March 3, 2017. (DE 1). The Complaint alleges, among other things, that on September 19, 2016 MGT disclosed its receipt of a subpoena from the SEC (the “Subpoena”). (*Id.* at ¶ 20). The Complaint alleges that Mr. Ladd and MGT thereafter made defamatory statements to Ms. Buhl regarding Mr. Honig, including that Mr. Honig was the “target” of the Subpoena and an SEC investigation. (*Id.* at ¶ 22). The Complaint alleges that Ms.

Buhl published these statements in a September 23, 2016 article on her website. (*Id.* at ¶¶ 23-25).

2. On June 5, 2017, Mr. Ladd and MGT filed a motion to dismiss, pursuant to Fed. R. Civ. P. 12(b)(3), for improper venue, and Fed. R. Civ. P. 12(b)(6), for failure to state a claim upon which relief can be granted. (DE 19-21).

3. On July 5, 2017, defendant Teri Buhl filed a motion to dismiss, pursuant to Fed. R. Civ. P. 12(b)(2), 12(b)(3) and 12(b)(6). (DE 27-30).

4. On July 17, 2017, Mr. Honig filed a brief in opposition to Ladd and MGT's motion to dismiss. (DE 31-33).

5. On July 26, 2017, Mr. Honig filed a brief in opposition to Ms. Buhl's motion to dismiss. (DE 34-36).

6. In connection with his opposition to Ms. Buhl's motion, Mr. Honig filed a declaration from Eric Anderson, formerly associated with MGT. (DE 36).

7. Mr. Anderson's declaration alleges that Mr. Ladd was in this District during the period September 17, 2016 to September 24, 2016, which includes the period between the time the Subpoena was publicly disclosed and the publication of Ms. Buhl's article. (DE 36 at ¶¶ 5-7).

8. On July 28, 2017, Mr. Honig filed a "Supplemental Brief in Opposition to Defendants Robert Ladd and MGT Capital Investments, Inc.'s Motion to Dismiss" (the "Supplemental Brief"). (DE 37). Mr. Honig filed the Anderson declaration as an attachment to his Supplemental Brief.

9. Taking all reasonable inferences at this stage in Mr. Honig's favor as the law requires, Defendants conclude that Mr. Honig has likely now met his burden of pleading venue, and accordingly withdraw their motion to dismiss for lack of venue pursuant to Fed. R. Civ. P. 12(b)(3).¹

10. While Defendants will not press their venue motion in light of the new facts alleged by Mr. Honig *after* the Rule 12(b)(3) motion had been filed, Defendants emphatically reject the notion that they sought "to mislead this Court into believing that they did not reside in North Carolina during the time period at issue," as Mr. Honig asserts in his Supplemental Brief. DE 37 at 1. This is a baseless claim, designed to harass Mr. Ladd and distract the Court from the merits of this matter. Mr. Honig has the burden of pleading venue, and Defendants simply argued that he had not done so. *See, e.g., Harley v. Chao*, 503 F.Supp.2d 763, 772 (M.D.N.C. 2007) ("When a defendant objects to venue pursuant to Rule 12(b)(3), the plaintiff has the burden of establishing that venue is proper in the district where the plaintiff brought the suit."). The facts set forth in Defendants' June 5, 2017 memorandum – including that Ms. Buhl is alleged to live and work in New York, MGT's Durham office was not designated in SEC filings as the company's principal executive office until after September 2016, and that MGT continues to maintain an office in Harrison, New York to this day – are demonstrably true and undisputed.

¹ Defendants reserve the right to move to transfer venue to the Southern District of New York (where Mr. Honig had previously filed his defamation action) pursuant to 28 U.S.C. § 1404(a), should any part of the Complaint survive Defendants' motion to dismiss. This would be particularly appropriate should the Court find that it lacks personal jurisdiction over Ms. Buhl. *See* DE 28 at 7-15 (brief in support of Ms. Buhl's motion to dismiss).

11. On August 1, 2017, Mr. Honig served on Defendants a letter enclosing a draft motion pursuant to Fed. R. Civ. P. 11, repeating his false claim that Defendants “misled” the Court. Should Mr. Honig file his motion (which was baseless to begin with and is now moot given Defendants’ withdrawal of their venue motion, *see* Fed. R. Civ. P. 11(c)(2)), Defendants will seek to recover attorneys’ fees and costs incurred in opposing it.

This the 18th day of August, 2017.

/s/ John P. Coffey
John P. Coffey

/s/ Darren A. LaVerne
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CERTIFICATE OF SERVICE

I hereby certify that on this day, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

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This 18th day of August, 2017.

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